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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 05 014 51222 Office: NEBRASKA SERVICE CENTER Date: OCT 23 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a quantitative fisheries scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and evidence previously submitted. As will be discussed in greater detail below, the petition appears primarily based on the unavailability of U.S. workers with the beneficiary's skills, an issue under the jurisdiction of the Department of Labor even where the project on which the beneficiary is working has national significance. Thus, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Counsel has asserted that the beneficiary qualifies for classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the beneficiary holds a Ph.D. in Quantitative Ecology and Resource Management from the University of Washington. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary thus qualifies as a member of the professions holding an advanced degree. The remaining issue is

whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the beneficiary works in an area of intrinsic merit, salmon preservation. The director did not contest that the proposed benefits of the beneficiary's work would be national in scope. It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

We acknowledge the significance of the projects on which the beneficiary works. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any

alien qualified to work on this project must also qualify for a national interest waiver. Similarly, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.*

At issue is whether this beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate that the beneficiary enjoys a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The beneficiary obtained his Master's degree and Ph.D. from the University of Washington under the supervision of [redacted], Chair of the Columbia Basin Research Institute at that university. After receiving his Ph.D., the beneficiary worked as a postdoctoral researcher with [redacted] before going to work for the petitioner.

On appeal, counsel asserts that the director erred in failing to favorably consider the beneficiary's scholarship from Rotary International. Scholarships are typically awarded based on academic achievements. Academic performance, however, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6.

[redacted] discusses the difficulty in restricting the catch of threatened or endangered anadromous fish when they migrate to the ocean. The beneficiary investigated ocean distributions of such fish, discovering "significant differences in distribution" between healthy and threatened or endangered populations. [redacted] notes that this work was published in an NPAFC bulletin and asserts that the results "help managers to differently allocate fishing efforts by regions in the ocean." [redacted] provides no examples of changes or proposed changes in ocean fishing that were prompted by the beneficiary's results.

In addition, [redacted] explains that forecasting the number of fish that return to rivers to spawn is important for management of the fish as a certain number of fish must be allowed to reach the spawning grounds for conservation purposes. The beneficiary developed a computational model to forecast the return of sockeye salmon to Bristol Bay, which can be applied to other anadromous fish, such as the beneficiary's successful application of his model to Chinook salmon returns to the Columbia River basin. As of the date of filing, the beneficiary had not yet published this work. Dr. [redacted] the beneficiary's scholarship counselor at the University of Washington, asserts that

an accurate forecast of the salmon runs to Bristol Bay is essential, but fails to provide an example of management authorities relying on the beneficiary's model. Significantly, [redacted] Chief Fisheries Scientist for the Alaska Department of Fish and Game, does not claim to have applied the beneficiary's model. Rather, he states that the state is preparing to spend millions of federal dollars on salmon recovery and needs the beneficiary's "unique blend of skills for critically appraising methodologies employed in sampling designs, monitoring systems, research programs and resource management." While [redacted] praises the beneficiary's "background in fisheries, advanced statistics, and mathematics," these are requirements that could be listed on an application for permanent employment certification.

[redacted], Executive Director of the petitioning commission, discusses the importance of recovering salmon populations and asserts that the beneficiary brings a "difficult-to-find combination of skills for salmon restoration work in the Columbia River Basin." [redacted] the petitioner's manager, provides a similar statement. In addition, [redacted], Executive Director of the Confederated Tribes of the Umatilla Indian Reservation, asserts that the beneficiary is "singularly qualified as an expert in anadromous fish population dynamics." Once again, unique skills are not a basis for waiving the labor certification requirement and shortage issues fall under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

[redacted] asserts that the beneficiary has proposed and received $250,000 in project funding while working for the petitioner. The ability of the beneficiary to secure funding for his work is a favorable consideration. More significant, however, would be the results of his past funded work. The record is less persuasive that the beneficiary's past results and models have already influenced the field.

[redacted], Co-Chair of the Interior Columbia Basin Technical Recovery Team with the National Oceanic and Atmospheric Administration (NOAA) office in Oregon, asserts that the beneficiary's main role with the petitioner is "to develop and apply quantitative methods involving statistics and mathematics, thereby providing managers with objective scientific analyses critical to good decision making." As of the date of filing, the beneficiary was working on a project under the purview of NOAA. [redacted] asserts that NOAA "is responsible for assessing, managing and promoting conservation of living marine and anadromous resources in the waters of the Pacific Northwest, including oversight for the implementation of the [Endangered Species Act] for the West Coast Population of anadromous fish." [redacted] discusses the beneficiary's models, but does not assert that any of NOAA's policies have derived from those models. While [redacted] a research fishery biologist with the Seattle-based Northwest Fisheries Science Center of NOAA, asserts that the beneficiary's models represent a significant contribution to the statistical theory currently used to manage fisheries, he does not indicate that any managers have adopted the beneficiary's models or are considering doing so. Notably, [redacted] praises an article by the beneficiary that had not yet been published as of the date of filing. The petitioner must establish the beneficiary's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

[redacted], a fishery biologist with the Bonneville Power Administration (BPA), discusses the beneficiary's leadership of the petitioner's efforts on a contract for BPA, the Safety-Net Artificial Propagation Program (SNAPP). The objective of SNAPP was "to determine extinction risk of spring/summer Chinook salmon and steelhead populations in the Snake River basin and, if necessary, to intervene with hatchery 'safety-net' programs to reduce this risk." The beneficiary calculated extinction risk, prioritized populations most at risk, presented his work at a formal conference, wrote reports and organized a workshop to present the SNAPP results to "fishery co-managers." At the workshop, the beneficiary presented his findings "to federal, state and tribal fishery co-managers and scientists." According to [redacted], as a result of the beneficiary's work, it was determined that no additional intervention was necessary. [redacted], however, specifically refers us to BPA's website to view the beneficiary's report. In that report, the beneficiary concluded that some populations were at serious risk while others were at moderate risk. While these conclusions would not necessarily have to have been ignored to conclude that no additional intervention by BPA was necessary, [redacted] does not adequately explain the significance of the beneficiary's report finding that some populations were at risk on BPA's ultimate decision not to intervene.

[redacted] President of his own consulting firm in Oregon, indicates that he coordinated the SNAPP project. [redacted] asserts that the beneficiary's paper was the "major product of the entire SNAPP project," but concedes that "various scientists presented alternative methods and analyses to address extinction risk of salmon and steelhead species." [redacted] expresses his own opinion that the beneficiary's work was "superior" to the other analyses, but the record lacks official BPA or SNAPP reports adopting the beneficiary's methods as superior to the other analyses.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an application for permanent employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.